



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201020021**

Release Date: 5/21/2010

Date: February 25, 2010

UIL: 501.03-00; 501.03-08; 501.03-17

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: December 14, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL Code:

501.03-00

501.03-08

501.03-17

Legend:

State A:

f:

Section 501(c)(3) Organization:

Section 501(c)(4) Organization:

Section 527 Organization:

Date s:

Date t:

Date u:

Date v:

Date w:

City R:

City S:

Event a:

Event b:

Children's Program:

2007 Agenda:

2008 Agenda:

Political Candidate F:

Political Candidate G:

Political Candidate H:

Political Candidate I:

Political Candidate J:

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3). The basis for our conclusion is set forth below.

In your application, you requested classification as a supporting organization described in section 509(a)(3) of the Code. By letter dated March 17, 2008, you amended your application to request classification as a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi).

## FACTS

### Organization

You were incorporated on Date s as a nonprofit non-membership corporation under State A law. Your Articles of Incorporation stated that your purposes are:

*[T]o receive and maintain a fund or funds of real or personal property, or both, and subject to the restrictions and limitations hereinafter set forth, to use and apply substantially all of the income therefrom and the whole or any part of the principal thereof exclusively for literary or educational purposes in furtherance of the purpose and for the exclusive benefit of Section 501(c)(4) Organization or any successor organization exempt under Section 501(c)(4). . . .*

Article I, Section B of your original Bylaws stated:

*Section 501(c)(3) Organization is formed and organized and shall be operated exclusively for charitable, literary and/or educational purposes within the meaning of Section 501(c)(3) . . . . Within the scope of the foregoing purposes, Section 501(c)(3) Organization is organized to provide support to Section 501(c)(4) Organization.*

Your Internet website is f. The first page of this website states:

\*\*\*\*

Effective Date t, you amended your Articles of Incorporation. Your amended Articles change your status from a nonprofit non-membership corporation to a nonprofit membership corporation. Your amended Articles state that your purposes are:

\*\*\*\*

### Governance

You amended your original Bylaws on Date u ("2008 Amended Bylaws"). Your 2008 Amended Bylaws state that you will have a minimum of three directors, all of whom are appointed by Section 501(c)(4) Organization (a related section 501(c)(4) organization described further below). Your proposed draft amendment to your Bylaws, \*\*\*\*, state that your Board of Directors will appoint successors to your outgoing director or directors.

According to your Form 1023 Application, your Board of Directors consists of four individuals. Your website also lists members of an Executive Committee and an Advisory Board.

You are related to two other organizations: Section 501(c)(4) Organization and Section 527 Organization, described further below. All of these organizations have had certain directors and officers in common, as follows:

- Your former Chief Operating Officer also performed work for Section 501(c)(4) Organization and Section 527 Organization. Each organization compensated this individual for the work performed for each organization.

- Your former President also performed services for Section 527 Organization. You and Section 527 Organization each compensated this individual for the work performed for each organization.
- Your Executive Director is also the President of Section 527 Organization.
- There is overlap between your officers and directors and those of Section 527 Organization.

### Funding

You have \*\*\*\* levels of membership, which are available to \*\*\*\*.

\*\*\*\*

You also expect to receive charitable contributions from individual solicitations. You have specifically secured funding from several foundations, pending your recognition as an organization described in section 501(c)(3) of the Code. Your members will also periodically receive mailings, emails, and phone solicitations, requesting their contributions for purposes of establishing an endowment, upgrading to lifetime membership, and remitting membership dues. Potential members may also receive communication regarding benefits and costs of membership.

### Activities

The first page of your website is open to the general public. The first page presents your mission \*\*\*\*. The first page also contains links \*\*\*\*. These links contain lists of books recommended by you and books written or recommended by your Event a speakers and members. The additional information on your website is available only to your dues-paying members, who must log in and enter a user name and a password. You state that members are able to access a variety of educational resources, both in print and online, including newsletters on noteworthy issues and current events \*\*\*\* and recordings of your briefings and other activities.

Your principal activities have consisted of conducting an annual Event a along with Event b. Event b is part of your Children's Program, the purpose of which is:

\*\*\*\*

You conducted Event a and Event b each year from 2005 through 2008. Your activities in 2009 and expected future activities are described below. You state that you spend approximately \*\*\*\* percent of your time and expenditures on Event a, \*\*\*\* percent on Event b, and \*\*\*\* percent on other activities, including teleconferences, informational sessions, regional briefings, newsletters, and educational roundtables.

You state that your members are able to participate in educational activities throughout the year, including:

- Regional gatherings that provide the opportunity to create awareness of opportunities to engage in local and regional charitable activities \*\*\*\*;
- Ongoing informal membership gatherings to discuss personal activities \*\*\*\*;
- Regional briefings on topics related to your educational goals;
- Regular conference calls on educational and policy issues; and
- Roundtable discussions with journalists, scholars \*\*\*\*, and other noteworthy scholars on topics related to your charitable purposes.

### 2007 Event a and Event b

You conducted Event a and Event b \*\*\*\* in 2007 at a hotel in City R. The cost to participate in Event a was \*\*\*\*, which included all meals, materials, and events. The fee for Event b was \*\*\*\*. Individuals and families who are not guests of a member may attend Event a and Event b. In 2007, approximately \*\*\*\* percent of attendees were nonmembers. The fee for nonmembers was the same as for members. You had no formal program for advertising Event a to the general public. Rather, you encouraged members to e-mail friends and acquaintances and to publicize the event by word-of-mouth.

The 2007 Agenda describes the activities of Event a as including speeches from spiritual leaders, leaders of various charitable organizations, public officials, political candidates, journalists, academics, and authors, dinners, social events, lectures, panel discussions, a worship service, a film screening, and musical performances. Based on the 2007 Agenda, approximately \*\*\*\* hours of events were scheduled, of which approximately \*\*\*\* hours consisted of panel discussions, individual speeches, a religious service, and tours. The remainder of the events involved dinners, receptions, or optional activities, such as viewing a film.

One event listed in the 2007 Agenda was called "Meet Political Candidate F (running for \*\*\*\* fundraising event)," where you stated: "Continental breakfast & presentation of the candidate." Another event listed in the 2007 Agenda was the "Opening Night Adult Dinner & Program." One of the speakers at this event was Political Candidate G, whom you identified in the speaker biographies appearing on your website as "\*\*\*\* Candidate," and included a link to his campaign website. Another event listed in the 2007 Agenda was an "Adult Lunch." The speaker at this event was Political Candidate H, whom you also identified in the speaker biographies on your website as "\*\*\*\* Candidate," and included a link to his campaign website.

The last page of the 2007 Agenda includes a section entitled "Additional Retreat Information," under which there is a heading called "Confidentiality & No Solicitation Commitment," which states:

*Please remember to be intentional and discreet in sharing information about \*\*\*\* with others as we continue to work hard to maintain our "under the radar screen" approach. We ask of our members, guests and speakers that all of the dialogue that takes place at \*\*\*\* events, and information on the nature of the organization itself, remain off-the-record and confidential. This helps to promote a thoughtful and thought-provoking exchange of ideas and opinions.*

Event b took place at the same time as Event a and was designed to be attended by the children of the individuals attending Event a. The 2007 Event b consisted of approximately \*\*\*\* scheduled hours of games, sightseeing, recreation, and other activities designed for children. Of these \*\*\*\* hours, approximately \*\*\*\* were scheduled for museum or other educational tours and a service project.

#### 2008 Event a and Event b

You conducted Event a and Event b \*\*\*\* in 2008 at a hotel in City S. You had no formal program for advertising Event a to the general public. Rather, you encouraged members to e-mail friends and acquaintances and to publicize the event by word-of-mouth. The 2008 Agenda describes the activities of Event a as including receptions, speeches from public officials, political candidates, journalists, authors, professors, film producers, policy fellows and others, panel discussions, a worship service, and an optional event of viewing a movie and speaking with its producer.

Based on the 2008 Agenda, approximately \*\*\*\* hours of events were scheduled, of which approximately \*\*\*\* hours consisted of panel discussions, speeches, or worship. The remainder of the scheduled events involved dinners, receptions, addresses from political candidates, or optional entertainment activity.

The 2008 Event b took place at the same time as the 2008 Event a. The 2008 Event b consisted of approximately \*\*\*\* scheduled hours of events, with approximately \*\*\*\* hours devoted to an activity that appears to be educational \*\*\*\*. The remainder of the 2008 Event b activities were recreational or social in nature, including horseback riding, mountain biking \*\*\*\*.

The following is a summary of the hours you devoted to educational activities and to other activities during the 2007 and 2008 Event a and Event b:

\*\*\*\*

#### 2009 and Future Activities

You did not hold Event a or Event b in 2009 due to issues with the facilities where they were to take place. You state that you plan to hold Event a and Event b in 2010, which will be similar in format to the 2008 activities.

#### Related Organizations

You are related to two other organizations: Section 501(c)(4) Organization and Section 527 Organization.

- Section 501(c)(4) Organization

Section 501(c)(4) Organization was formed on Date v and was recognized on May 18, 2004 by the Internal Revenue Service as an organization described in section 501(c)(4) of the Code. You state that you and Section 501(c)(4) Organization were established by the same individuals. You state in your Form 1023 Application that you and Section 501(c)(4) Organization share common officers, directors, and authority to approve budget expenditures,

and that both organizations work in a coordinated manner, sharing office space, equipment, and employees. However, in a letter dated April 21, 2009, you state that you and Section 501(c)(4) Organization no longer have joint employees.

Section 501(c)(4) Organization conducted an event in Washington D.C. \*\*\*\* at which public figures and policy experts spoke on social issues and matters of political philosophy \*\*\*\*. The event included a "\*\*\*\* Discussion" with representatives from each \*\*\*\* candidate's campaign. The event also included addresses from Political Candidate I, and other \*\*\*\* public officials.

Section 501(c)(4) Organization was funded through annual membership dues. You and Section 501(c)(4) Organization shared many members in common, but you state that membership dues paid to Section 501(c)(4) Organization and membership dues paid to you were kept in separate accounts and were not commingled. You state that each organization uses its own funds for expenses for activities representing each respective organization's purpose.

You stated that on April 22, 2009, the Board of Directors of Section 501(c)(4) Organization adopted a resolution to dissolve as of May 1, 2009. Upon dissolution, Section 527 Organization would take over Section 501(c)(4) Organization's activities. In addition, after all of its liabilities and obligations have been satisfied, it would distribute all its assets to you.

- Section 527 Organization

Section 527 Organization was formed on Date w as an organization described in section 527 of the Code. It was formed as a Political Action Committee ("PAC") operating under the laws of the Federal Election Campaign Act, as codified in 2 U.S.C. § 431 *et seq.* You and Section 527 Organization share a common independent contractor, \*\*\*\*, who serves as your Executive Director. As stated above, you previously had both a Chief Operating Officer and President who also performed services for the Section 527 Organization. Many of the individuals who had established Section 527 Organization were also instrumental in your formation. Section 527 Organization is funded through donations from the general public, either directly to Section 527 Organization, or to specific candidates endorsed by Section 527 Organization. It is not a membership organization.

You state that Section 527 Organization was created to influence and facilitate campaign contributions to senatorial, gubernatorial, and presidential candidates \*\*\*\*.

You state that you and Section 527 Organization send out all communications separately, do not share mailing costs or other costs of communications, and maintain separate and independent mailing lists.

Section 527 Organization held "\*\*\*\* Meeting" \*\*\*\* in City R. The event included a session \*\*\*\* with addresses from representatives of Political Candidate J and Political Candidate G.

In a letter dated January 30, 2008, you stated that Section 527 Organization is operated out of the same office from which you operate and uses the same telephone lines. You state that your officers and other individuals keep close track of the work that they do for you and for Section 527 Organization and that none of your assets are or will be used by Section 527 Organization. You also state that the office space and phone lines are donated and that the two organizations do not distinguish between the uses of these facilities or keep track of the amounts used by each. You separate costs for goods, supplies, and services based on the nature of the item.



Your activities and the activities of the Section 527 Organization were previously conducted by Section 501(c)(4) Organization. You have stated that your former Chief Operating Officer and Board Treasurer attempted to ensure that only educational events are funded by your organization and that honorariums for speakers at Event a were paid for by Section 501(c)(4) Organization if the speeches contained content that was not in furtherance of a section 501(c)(3) purpose. You have stated that they do this by keeping extensive and accurate records to reflect the time officers spend on your activities and Section 527 Organization's activities.

### LAW

Section 501(c)(3) of the Code describes a corporation organized and operated exclusively for religious, charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual and that it not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") states that to be described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be regarded as exempt if more than an insubstantial part of its activities furthers a non-exempt purpose.

Section 1.501(c)(3)-1(c)(3)(i) of the regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Section 1.501(c)(3)-1(c)(3)(iii) of the regulations states that an organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. This section defines a candidate for public office as an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

Section 1.501(c)(3)-1(d)(1) of the regulations provides that an organization may be recognized as exempt under section 501(c)(3) of the Code if it is operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirements of this subsection, an organization must establish

that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations includes in the definition of educational activities the instruction or training of the individual for the purpose of improving or developing his capabilities and the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, states that political campaign intervention may occur in the context of an organization's business activity, such as the selling or renting of mailing lists and the leasing of office space. The ruling identifies several factors to be considered, including whether the good or facility is available to candidates in the same election on an equal basis, whether the good or facility is available only to candidates and not to the general public, and whether fees charged are at the organization's customary and usual rates.

Rev. Rul. 2007-41, supra, also states that if a candidate is invited to speak at an organization's function in his or her capacity as a political candidate, factors in determining whether participation in a political campaign has occurred include: whether the organization provides an equal opportunity to participate to political candidates seeking the same office, whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate's attendance), and whether any political fundraising occurs.

Pursuant to Rev. Rul. 2007-41, supra, candidates may also appear or speak at organization events in a non-candidate capacity, such as in his or her public figure capacity because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. If the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors determining whether the candidate's appearance results in political campaign intervention include: whether the individual is chosen to speak solely for reasons other than candidacy for public office, whether the individual speaks only in a non-candidate capacity, whether either the individual or any representative of the organization makes any mention of his or her candidacy or the election, whether any campaign activity occurs in connection with the candidate's attendance, whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present, and whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that although the organization's efforts were "commendable" and may serve to educate business professionals, the efforts were also "directed fundamentally to ends other than that of education," and, as such, the Bureau did not qualify.

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the organization, essentially an "association of churches," was denied recognition under section 501(c)(3) because it engaged in the substantial nonexempt purpose of providing financial and

tax advice. Although the organization adopted basic religious tenets and engaged in religious activities, the court found that it also acted as a tax adviser by encouraging its members to engage in a pattern of tax-avoidance activities. The Tax Court stated that based on Better Business Bureau, supra, "the existence of a substantial nonexempt purpose, regardless of the coexistence of an exempt purpose, precludes an organization from qualifying under section 501(c)(3)." Id. at 29.

In Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), an organization operating a religious retreat facility failed to qualify for exemption under section 501(c)(3) of the Code because it did not show that the retreat facility was operated exclusively for religious purposes. Although the organization's mountain lodge offered guests religious, recreational, and social activities, none were regularly scheduled or required. The court concluded that the organization had not met the burden of proof to show that the lodge was operated primarily for an exempt religious purpose and that the recreation and social activities at the lodge were only incidental to a religious purpose.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court held that an organization that operated a school to train individuals for careers as political campaign professionals did not exclusively serve purposes described in section 501(c)(3) of the Code because it did not operate on a nonpartisan basis and it served private interests more than incidentally. The court concluded that the organization conducted its activities to benefit the party's candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve a private interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

### **ANALYSIS**

Based on our analysis of the information you submitted with your application and in subsequent correspondence, we have determined that you do not qualify as an organization described in section 501(c)(3) of the Code because you are not operated exclusively for one or more exempt purposes within the meaning of section 501(c)(3), you operate for a substantial non-exempt purpose, you carry on prohibited political activities, and you provide more than incidental private benefit.

To be described in section 501(c)(3) of the Code, an organization must be operated exclusively for one or more of the purposes specified in such section (the "Operational Test"). If an organization fails to meet the Operational Test, it is not exempt. See section 1.501(c)(3)-1(a)(1) of the regulations. For the reasons explained below, we have concluded that you fail to satisfy the Operational Test.

#### **Operational Test**

An organization is "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code, and if not more than an insubstantial part of its activities further a non-exempt purpose. See, e.g., section 1.501(c)(3)-1(c)(1) of the regulations; Better Business Bureau of Washington, D.C., Inc. v. United States, supra. Exempt purposes include, among others, charitable and educational purposes. See section 1.501(c)(3)-1(d)(1).

- Educational

For purposes of section 501(c)(3) of the Code, educational activities include the instruction or training of the individual for the purpose of improving or developing the individual's capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community. See section 1.501(c)(3)-1(d)(3)(i) of the regulations.

Your primary activities, accounting for \*\*\*\* percent of your overall activities, consisted of operating Event a and Event b. The remaining \*\*\*\* percent of your overall activities, as described above, are restricted to your dues-paying members. For 2007 and 2008, the total Event a and Event b activities were approximately \*\*\*\* hours. However, only a portion of these activities, approximately \*\*\*\* hours, or \*\*\*\* percent, consisted of activities that furthered an educational purpose.

The other activities of Event a included dinners, receptions, addresses from political candidates, and optional activities such as hospitality suites or viewing a film, recreational activities, religious services, and a community service activity. Nearly all of these activities are social and entertaining in nature, and comprise a substantial part of Event a's and Event b's schedules.

Therefore, we cannot conclude that the primary purpose of Event a and Event b is to further education within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations because they cannot be characterized as "instruction or training of the individual for the purpose of improving or developing his capabilities and the instruction of the public on subjects useful to the individual and beneficial to the community." You are similar to the organization in Schoger Foundation, supra, in that your activities only incidentally further an educational purpose.

In addition, the beneficiaries of your educational activities are limited to your dues-paying members. Membership in your organization requires the submission of an application, approval by current members, and the payment of a substantial annual or lifetime membership fee. Only your members, not the general public, may access your website and the educational material that is available on the website. You publicize Event a only to your dues-paying members and certain others whom members may notify by word of mouth. You do not advertise Event a or make its activities known to the general public, only to your members. The program for the 2007 Event a contains a "Confidentiality & No Solicitation Commitment," described above, which expressly limits the extent to which attendees are permitted to disclose and share information they obtain while at the Event a. The restrictions on membership, the limitation on website access to dues-paying members only, and the constraints on the dissemination of Event a information by members are inconsistent with activities that further an educational purpose within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations.

Because your activities do not primarily further educational purposes within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations, you are not operated exclusively for one or more exempt purposes as required by section 1.501(c)(3)-1(a) of the regulations.

#### Substantial Non-exempt Purpose

Event a and Event b together account for \*\*\*\* percent of your time and expenditures, and thus comprise a substantial, rather than an incidental, part of your activities. As a result, because the operation of Event a and Event b constitute activities that further a substantial non-exempt

purpose, you are precluded from qualifying for exemption under section 501(c)(3), even if your other activities furthered an exempt purpose. Better Business Bureau of Washington D.C., Inc., supra; National Association of American Churches, supra.

#### Prohibited Political Campaign Intervention

An organization is not described in section 501(c)(3) of the Code if any part of its activities includes participating or intervening in a political campaign. This restriction on political activity is an absolute prohibition. For example, an organization participates or intervenes in a political campaign if it makes an asset available to a candidate for public office or a political organization. See Rev. Rul. 2007-41, supra.

The prohibition against political campaign activity does not prohibit a section 501(c)(3) organization from sharing directors with a section 527 political organization, so long as the directors of the charitable corporation are acting strictly in their personal capacity by serving on the political organization's board. Furthermore, the prohibition does not prevent a section 501(c)(3) organization's officials from being involved with the political organization if those officials do not in any way utilize the organization's financial resources, facilities, or personnel, and clearly and unambiguously indicate that the actions taken or the statements made are those of the individuals and not of the organization. Whether the individuals are truly acting in their individual capacity is an evidentiary question, which will be answered unfavorably if there is any similarity of name between the section 501(c)(3) organization and the political organization, any excessive overlap of directors without a convincing explanation for the situation, or any sharing of facilities.

Although your office space and telephone lines are donated, they became your assets upon donation. You make some of the office space and telephone lines available to Section 527 Organization but do not charge a fee for the use of these assets. You have not demonstrated that you make similar facilities available to the general public or other political organizations. Section 527 Organization intervenes in political campaigns as a natural consequence of its status as a section 527 organization. Therefore, your assets are also used to intervene in political campaigns, which precludes you from qualifying for exemption under section 501(c)(3) of the Code.

Your Internet website is "f." This address is similar to the name of Section 527 Organization \*\*\*\*. This similarity leads to the inference that these organizations are related and that some of your activities may be attributed to and/or conducted by Section 527 Organization.

The program for your 2007 Event a publicizes an optional fundraising event for a \*\*\*\* candidate, which is described as a "presentation of the candidate." Fundraising for a political candidate indicates support for that candidate, and therefore constitutes participation or intervention in a political campaign on behalf of a candidate for public office.

Finally, you invited two candidates running for \*\*\*\* to speak at your 2007 Event a and presented them as political candidates, thereby participating in a political campaign on behalf of these candidates and in violation of the prohibition in section 501(c)(3) of the Code. Before the candidates spoke at your retreat, you published their biographies on your website with the title "\*\*\*\* Candidate." You also published their campaign website addresses as part of their biographies. We do not have evidence that you provided an equal opportunity to participate to other candidates seeking the same office. Therefore, we are unable to conclude that you chose

the candidates to speak solely for reasons other than their candidacy for public office. Instead, we have determined that despite their both holding or having held public office, the candidates did not speak at Event a in a non-candidate capacity.

Based on these activities, even if you otherwise operated primarily for an exempt purpose, you participated in political campaigns on behalf of candidates for public office, which is prohibited by section 501(c)(3) of the Code, and therefore precludes you from qualifying for exemption. See Rev. Rul. 2007-41, supra.

- Action Organization

In addition, we have determined that you are an "action" organization described in section 1.501(c)(3)-1(c)(3) of the regulations. An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

You have engaged in activities that constitute participation or intervention on behalf of candidates for public office, have made assets and resources available to Section 527 Organization, a section 527 political organization, and have engaged in activities that suggest overlap of resources and personnel with this same 527 political organization. These facts lead to the conclusion that you are an "action" organization within the meaning of section 1.501(c)(3)-1(c)(3) of the regulations. Therefore, you are not operated exclusively for one or more exempt purposes as required in section 1.501(c)(3)-1(a).

#### Impermissible Private Benefit

Even if you otherwise qualified for exemption as an organization described in section 501(c)(3) of the Code, your activities furthered a substantial private interest under section 1.501(c)(3)-1(d)(1)(ii) of the regulations by providing more than incidental private benefit. Therefore, you are precluded from otherwise qualifying for exemption.

An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Private interests are not limited to the "insiders" of an organization; they may include any group or organization that is not a "charitable class." American Campaign Academy, supra.

Section 527 Organization derives a substantial benefit from your activities because it is able to coordinate fundraising events around your main activities, Event a and Event b. Section 527 Organization also derives a substantial benefit from your providing it with office space and telephone lines free of charge, and benefits from the similarity of the name of your website ("f") to its name ("\*\*\*\*\*"). These benefits constitute more than incidental private benefit. Therefore, you are not operated exclusively for an exempt purpose as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

### CONCLUSION

You do not qualify as an organization described in section 501(c)(3) of the Code because you are not operated exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Code, you operate for a substantial non-exempt purpose, you carry on prohibited political activities, and you provide more than incidental private benefit.

For the reasons set forth above, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the IRS may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the IRS will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

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1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation. We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements